

**Board of Review
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Issue ID: 0036 4792 22

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant benefits following her separation from employment on March 27, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On May 9, 2020, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on August 14, 2020, the review examiner affirmed the agency determination, concluding that the claimant quit her position with the employer to accept new full-time, permanent employment with a new employer, and, thus, she was not disqualified under G.L. c. 151A, § 25(e). The Board accepted the employer's application for review.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The employer trains service dogs. The claimant worked as a dog trainer for the employer. The claimant worked for the employer from 8/29/2017 to 3/27/2020.
2. The employer paid the claimant \$17.25 per hour.
3. The claimant disagreed with some of the decisions that the employer made about the dogs it trained.
4. The claimant applied for employment with a school district. On 3/06/2020, the school district offered employment to the claimant. The school district offered a full-time paraprofessional position to the claimant. The school district offered \$17.50 per hour to the claimant. The school district told the claimant that she would start work on 3/30/2020. The claimant accepted this employment offer.
5. The claimant resigned from her employment with the employer on 3/09/2020. The claimant offered to work a three-week notice period.

6. The claimant resigned from her employment with the employer because she accepted employment with the school district. The claimant would not have resigned from her employment with the employer had she not had new employment lined up.

7. The school district did not allow the claimant to begin work for it because it closed its schools due to the COVID-19 crisis.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record. We also believe that the decision to award benefits is free from any error of law affecting substantive rights.

The claimant is eligible for benefits based on language in G.L. c. 151A, § 25(e), which provides, in relevant part, the following:

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

Here, the review examiner found that, after the claimant resigned her position from this employer, but before she began her position with her new employer, the new employer did not allow the claimant to begin working as scheduled, because it had closed its schools due to the COVID-19 pandemic. Ultimately, the claimant filed for benefits based on her separation from the new employer.

The DUA has a regulation specific to how charges should be allocated when the above statutory provision applies. 430 CMR 5.05(4) provides the following:

With respect to any claim filed, if any base period employer shall show to the satisfaction of the commissioner that the worker became separated from his last employment with such employer solely for the purpose of accepting work with another employing unit by which he had been hired, charges with respect to benefits paid to such a worker shall not be chargeable to such employer's account but shall be charged to the solvency account.

Here, the review examiner found that the claimant quit her job with the employer to accept new, permanent, full-time employment with another employer. Consequently, 430 CMR 5.05(4) may be applicable. Given that the Board has limited authority in this case, *i.e.*, to review only the separation issue, its order cannot directly address how charges are to be assessed. If the employer has further questions regarding the charges on the claim, it can contact the agency's Employer Charge Unit.

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week ending April 4, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 10, 2020



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws, Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:

www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

JPCA/rh